RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—TENANTS IN COMMON—INCEPTION OF HOSTILITY.—A father died leaving seven children as heirs to his farm. Since 1883, the plaintiff, who was the eldest son, had been in continuous and exclusive possession, paying all the taxes and taking all the profits without rendering any account to his co-heirs. Before 1883, the plaintiff had rebuilt the house on the premises, and in 1901, he built a barn on the place. In a suit to quiet title, it was *held*, that it was a permissible inference from all the evidence that the plaintiff had gained title by adverse possession. *Hahn* v. *Keith et al.*, (Wis., 1919) 174 N. W. 551.

Where one of several heirs remains in exclusive possession on the death of the ancestor, his possession will be deemed to be for the benefit of his co-heirs. *Shaw et al.* v. *Schoonover*, 130 Ill. 448; *Jackson* v. *Benjamin*, 8 Johns. 101. The possession of a co-tenant, permissive at its inception, may, however, become adverse. *McCall* v. *Webb*, 88 Pa. 150. But to render such possession adverse, there must be some act equivalent to an ouster. *Tullock* v. *Worrall*, 49 Pa. 133. Mere possession by one co-tenant, accompanied by no act which will amount to an ouster, ought not to be construed into an adverse possession. ANGELL, LIMITATIONS, 463; *McClung* v. *Ross*, 5 Wheat. 116. The possession must be accompanied by a notorious claim of an exclusive right. *Tullock* v. *Worrall, supra.* The majority opinion in the principal case evidently confused the law relative to the adverse possession of strangers with that of co-tenants. As pointed out by the dissenting opinion (in which two justices concurred), the two cases, which were cited in the report in support of the proposition that twenty years of continuous and exclusive possession will raise a presumption of hostility against the true owner, did not involve controversies between co-tenants. *Bartlett* v. *Secor*, 56 Wis. 520; *Meyer* v. *Hope*, 101 Wis. 123. As to what evidence is sufficient to warrant the finding of an ouster, there seems to be a diversity of opinion. Staking out the land and setting up fishing nets; leasing parts of the premises to a stranger with the knowledge of the co-tenant and receiving the rents without accounting for them; forbidding the entry of a co-tenant; making substantial improvements; and, pernancy of the rents and profits for thirty years, have been held to be sufficient. *Chabert* v. *Russell*, 109 Mich. 571; *Law* v. *Patterson*, 1 W. and S. (Pa.) 186; *Gordon* v. *Pearson*, 1 Mass. 323; *Beitz et al.* v. *Buendiger et al.* 174 N. W. (Minn.) 440; *LaFountain* v. *Dee*, 110 Mich. 374. But pernancy of profits for twenty-six years was held to be insufficient. *Warfield et al.* v. *Lindell*, 30 Mo. 272. See, too, *Winsett* v. *Winsett*, (Ala., 1919) 83 So. 117. According to the view of the dissenting opinion in the principal case, there was no act which could be referred to as indicative of the inception of hostility. The house was not rebuilt at a time when the plaintiff had the exclusive possession; and if the building of the barn were to be taken as marking the inception of hostility, then the statutory period had not yet run. One court has gone to the

extreme of holding that continuous and exclusive possession together with the appropriation of profits for the statutory period will raise a presumption of law that there has been an ouster. *Thomas* v. *Garvan,* 15 N. C. 223.

BAIL—DISCHARGE OF SURETY—INSANITY OF PRINCIPAL.—The plaintiffs in error were sureties on a recognizance for the appearance of a criminal. The principal did not appear, and upon a proceeding to show cause why judgment for the penalty should not be rendered against the sureties, they pleaded the insanity and confinement of the principal in another state. The state demurred. *Held,* that insanity was a good excuse for non-performance of the conditions of the recognizance and released the sureties. *Smith et al.* v. *People,* (Colo., 1919) 184 Pac. 372.

The general rule is that if the condition of the undertaking of special bail becomes impossible of performance by the act of God, or of the law, or of the obligee, the bail are thereby discharged.

The reason of the rule is well expressed in the principal case where the court said, "it is plain that the purpose of a recognizance is merely to insure the presence for trial of a person accused of a bailable offense. The enriching of the public treasury is no part of the object at which the proceeding is aimed." It is well settled law that the death of the principal will discharge the bail. *Wakefield* v. *McKinnel,* 9 La. 449; *Griffin* v. *Moore,* 2 Ga. 331; *Mather* v. *People,* 12 Ill. 9; *State* v. *Cone,* 32 Ga. 663; *Hayes* v. *Carrington,* 12 Abb. Pr. (N. Y.) 179; *Granberry* v. *Pool,* 14 N. C. 155; *Mount Pleasant Bank* v. *Pollock,* 1 Ohio 36. The principal of these cases is that it has been put out of the power of the surety to exonerate himself. So, too, in the cases of unavoidable accidents and sickness, it has been held to excuse sureties for non-appearance. *Hargis etc.* v. *Begley,* 129 Ky. 477; *Scully* v. *Kirkpatrick,* 79 Pa. St. 324; *People* v. *Manning,* 8 Cowen (N. Y.) 297; *Chase* v. *People,* 2 Col. 481. Also the arrest of the principal by military authorities has been held to excuse the surety, *Belding* v. *State,* 25 Ark. 315; *Commonwealth* v. *Webster,* 1 Bush (Ky.) 616, or where a soldier principal is in the federal army, and at such a distance as to be unable to get a furlough. *Commonwealth* v. *Terry,* 2 Duv. (Ky.) 383. But where the principal is in the army, whether voluntarily or involuntarily, within a short distance of the place, and a furlough could have been obtained, but was not requested, the sureties are not released. *Briggs* v. *Commonwealth,* (Ky., 1919) 214 S. W. 975. There are also some decisions supporting the principal case, holding that insanity of the principal, if he is confined in a state asylum, or is adjudged insane, will excuse. *Wood* v. *Commonwealth,* 17 Ky. L. Rep. 1076; *Commonwealth* v. *Fleming,* 15 Ky. L. Rep. 491; *Fuller* v. *Davis,* 1 Gray (Mass.) 612. But in *Adler* v. *State,* 35 Ark. 517, it was held that confinement in an insane asylum, in another state, would not discharge the sureties. However in view of the other acts of God that will discharge the sureties, there is no good reason on principle, why insanity should not.

BANKRUPTCY—PROVABILITY OF TORT CLAIMS.—By fraudulent representations M was induced to buy certain foreign bills of exchange drawn by a